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Attorney for Defendant  
John Saro Balian

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

United States of America,

Case No.: CR 18-345-JFW

Plaintiff,

VS.

John Saro Balian,

## OBJECTIONS TO PSR BY DEFENDANT JOHN SARO BALIAN

## Defendant

Defendant John Saro Balian (“Mr. Balian” or “defendant”), by and through his counsel of record, hereby respectfully submits his objections to the Presentence Investigation Report (“PSR”):

## 1. No objection:

1 2. No objection;

2 3. No objection;

3 4. No objection;

5 5. No objection;

6 6. No objection;

7 7. No objection;

8 8. No objection;

9 9. No objection;

10 10. Objection the PSR misstates the facts. Paragraph 10 states that Grey

11 was a fugitive for “approximately one month” while footnote 1 indicates he was a

12 fugitive for “nearly two months.” Moreover, Mr. Balian objects to the statement

13 contained in footnote 1 that as a result of him tipping off Grey doing so “caused

14 law enforcement to redirect all sources in search of Grey” to the extent that this

15 falsely suggests that Mr. Balian’s conduct led to some form of an all hands effort

16 to located Grey with a result that the rest of the community was left unprotected.

17 Mr. Balian further objects to the extent that the PSR or recommendation letter

18 suggests that Mr. Balian intended by his conduct to put law enforcement

19 personnel at risk.

20

21

22

1       11.    Objection the PSR misstates the facts to the extent that Mr. Balian  
2 intended to personally use information obtained from law enforcement resources  
3 to retrieve the allegedly stolen property.

4  
5       12.    Objection the PSR misstates the facts to the extent that it fails to  
6 mention that A.B. was at the time that Mr. Balian provided information to the  
7 USMS that A.B. was then subject to an outstanding arrest warrant.

8  
9       13.    No objection;

10      14.    No objection;

11      15.    Objection the PSR misstates the facts;

12      16.    No objection;

13      17.    No objection;

14      18.    Objection to the extent that this statement suggests that Mr. Balian  
15 declined to be interviewed by the Probation Officer. In reality, Mr. Balian agreed  
16 to an interview but suggested that it be delayed in light of the parties' request to  
17 continue the sentencing.

18      19.    No objection;

20      20.    See paragraph below;

21      21.    See paragraph below;

22      22.    No objection;

23      23.    No objection;

1 24. No objection;

2 25. No objection;

3 26. No objection;

4 27. No objection;

5 28. No objection;

6 29. No objection;

7 30. No objection;

8 31. No objection;

9 32. No objection;

10 33. Objection a 2-level increase for abuse of a position of trust where he  
11 did not abuse a position of trust in a way that was a substantial factor in  
12 committing the charged offense. Rather, he inadvertently overheard a  
13 conversation and passed the information along. *See United States v. Foreman*,  
14 926 F.2d 792, 797 (9th Cir., 1991) (“Still, it must be conceded that section 3B1.3  
15 applies to offenders who abuse positions of public trust; not merely to those **who**  
16 **occupy such positions** or even to those who use such positions.”) (Reinhardt, J.,  
17 dissenting) (emphasis added). In other words, all offenses committed by police  
18 officers do not automatically qualify for the two-level enhancement. *See also*  
19 *United States v. Gould*, 983 F.2d 92, 94 (7th Cir. 1993) (status as “police officer  
20 cannot, in and of itself, trigger the application of section 3B1.3.”); *United States*  
21  
22  
23  
24  
25  
26  
27  
28

1       *v. Harrington*, 82 F.3d 83, 88 (5th Cir. 1996) (“merely having the position of  
2       public or private trust is not sufficient to warrant an increase under § 3B1.3”).  
3

4       34.      No objection;

5       35.      Objection see paragraph 33 above. Mr. Balian contends that the two-  
6       level enhancement should not apply;  
7

8       36.      No objection;

9       37.      Objection USSG § 2J1.2 does not apply to the facts of this case;

10       38.      No objection;

11       39.      No objection;

12       40.      No objection;

13       41.      No objection;

14       42.      Objection see above;

15       43.      Objection the PSR miscalculates the total number of units under  
16       § 3D1.4 by overstating the adjusted offense level for Count 3. The proper  
17       calculation is as follows:  
18

Group/Count	Adjusted Offense Level	Units
Count 1	16	1.0
Count 2	14	1.0
Count 3	6	0
Total Number of Units:		2.0

1       The probation officer also miscalculated how the Court should treat the  
2 three counts to which Mr. Balian pleaded guilty under the multi-count  
3 enhancement rules. Rather than using USSG § 2B1.1 for Count 3 as the  
4 government and Mr. Balian agreed, the probation officer used § 2J1.1 relating to  
5 obstruction of justice. PSR at ¶¶ 36 and by doing so the probation officer  
6 calculated the total offense level at 14 rather than the 6 agreed upon by the parties  
7 which, in turn, led to an additional point under § 3D1.4 and a total offense level  
8 16 and a sentencing range of 20 to 27 months.

12       Although the PSR does not fully justify using § 2J1.2, it referenced  
13 § 2B1.1(c)(3) suggesting it believes “the conduct set forth in the count of  
14 conviction establishes an offense” of obstruction of justice. Nowhere, however,  
15 does the probation officer explain how the conduct to which Mr. Balian pleaded  
16 guilty establishes that offense and, in fact, it does not meet the elements of 18  
17 U.S.C. § 1512. At best, Mr. Balian made false statements to federal agents, which  
18 even under the obstruction enhancement contained in § 3C1.1 would not apply to  
19 this situation under Application Note 5. That note gives examples of the types of  
20 conduct to which the enhancement would not ordinarily apply, including “making  
21 false statements, not under oath, to law enforcement officers, unless Application  
22 Note 4(G) above applies.” The 4(G) exception covers “a materially false  
23 statement . . . that significantly obstructed or impeded the official investigation . .

1 . of the instant offense[.]” Obviously, that exception would not apply here  
2 because the “instant offense” and the allegedly obstructive conduct are one and  
3 the same.  
4

5 44. No objection;  
6

7 45. Objection to the increase in offense level by 3 levels; the increase  
8 should be 2;  
9

10 46. Objection the combined adjusted offense level should be 18;  
11

12 47. No objection;  
13

14 48. No objection;  
15

16 49. No objection;  
17

18 50. Objection the total offense level should be 15;  
19

20 51. Objection the PSR misstates the facts;  
21

22 52. Objection the PSR misstates the facts;  
23

24 53. No objection;  
25

26 54. No objection;  
27

28 55. No objection;  
56. No objection;  
57. No objection;  
58. No objection;  
59. No objection;

1       60.    Objection Mr. Balian did not refuse to be interviewed but only  
2 suggested it be delayed in light of the parties' joint request to continue  
3 sentencing;

4       61.    No objection;

5       62.    Objection the PSR misstates that Mr. Balian "has a girlfriend, Sandra  
6 Salas, who resides in Brownsville, Texas."

7       63.    Objection;

8       64.    No objection;

9       65.    No objection;

10      66.    No objection;

11      67.    No objection;

12      68.    No objection;

13      69.    No objection;

14      70.    No objection;

15      71.    Objection;

16      72.    Objection;

17      73.    Objection;

18      74.    No objection;

19      75.    Objection;

20      76.    Objection, Mr. Balian and his family have no ability to pay;

1 77. Objection, Mr. Balian and his family have no ability to pay;

2 78. No objection;

3 79. Objection see above;

4 80. No objection;

5 81. No objection;

6 82. No objection;

7 83. No objection;

8 84. No objection;

9 85. No objection;

10 86. No objection;

11 87. No objection;

12 88. Objection the fine range should be \$7,500 to \$75,000 but since Mr.

13 Balian does not have the ability to pay any fine and is not likely to become able to  
14 pay, the fine in this case should be \$0.

15 89. Objection to the extent that the PSR suggests that Mr. Balian should  
16 pay the costs of prosecution where that is not required by any statute of  
17 conviction;

18 90. Objection as described in detail in Mr. Balian's sentencing position  
19 papers, he believes a downward departure is warranted in this case.

91. Objection as described in detail in Mr. Balian's sentencing position papers, he believes a variance to a sentence below the applicable guideline range is warranted in this case.

Dated: February 25, 2019

Respectfully submitted,

/s/ Craig Missakian  
Craig Missakian  
Attorney for Defendant  
John Saro Balian